9S.B.CIVIL WRIT PETITION NO.616/2007
(Narayan Lal Gurjar Vs. State of Rajasthan & ors)

Date of Order: 24th September 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.M.S.Udawat for Mr.Manish Shishodia for the petitioner
Mr.Rameshwar Dave, Dy.G.A. for the respondents

By way of this writ petition, the petitioner, a teacher Grade-II, seeks to question the order dated 28.09.2004 (Annex.7) whereby he has been transferred from Asind-Bhilwara to Shyampura-Bhilwara and the order dated 10.01.2007 (Annex.12) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing his appeal (No.1723/2004) against the said transfer order.

Briefly put, the averments of the petitioner in this writ petition are that he belongs to OBC and is permanent resident of village Athan Tehsil Asind District Bhilwara; that he has put in 31 years of service out of which he has served for 25 years in rural areas with full dedication and integrity and carries an unblemished career always delivering excellent results; that he remained posted at Bhadsi from March 1991 to July 1991, at Akarsada from the year 1991 to the year 1996, at Parasoli from the year 1996 to the year 1997; that he was transferred to the present place of posting at Secondary School, Asind by the order dated 22.06.1997; that he has been discharging his

duties and responsibilities at Asind to the entire satisfaction of his superiors and has delivered excellent results as certified by the Head Master of the school (certificate dated 29.09.2004 – Annex.2); and that besides the dedicated and devoted teaching, the petitioner also made efforts at plantation and earned appreciation from Mahaveer International. The petitioner has further averred that his wife Smt.Sayari Devi is President of Block Mahila Congress Committee, Asind and has been taking active part in the activities of Congress Party; that she also took active participation in the election compaign of the party candidate in the elections held in the year 2003 for Rajasthan Vidhan Sabha and because of those efforts, the present sitting MLA Shri Hangami Lal Mewara won the election. According to the petitioner, though he had not participated in any political activity but because of active participation of his wife in politics, he is treated closed to the said MLA belonging to the party in opposition in Rajasthan Vidhan Sabha and, as such the MLA and MP from Bhilwara have specifically recommended to the Education Minister that the petitioner be removed and transferred. The petitioner has annexed a copy of such desire as Annexure-4.

The petitioner has stated the grievance that it was unfortunate that he has been transferred by the order dated 28.09.2004 issued by the Dy. Director(Secondary), Education,

Ajmer Mandal, Ajmer from Secondary School, Asind (Panchayat Samiti and Tehsil Asind) to the Middle School, Shyampura (Panchayat Samiti, Mandalgarh) which is at a distance of about more than 200 kms. from the home village of the petitioner and from the present place of posting. The petitioner has asserted that as the teachers were transferred in bulk due to political reasons without there being any administrative exigency and under the influence of the persons of the present ruling party, the sitting MLA of Asind Shri Hangami Lal Mewara has requested the Education Minister to revoke the impugned transfer order in respect of the petitioner and other teachers by his letter dated 04.10.2004(Annex.8). The petitioner has also referred to a recommendation for cancellation of transfers as made by the Member of Panchayat Samiti, Asind who is Chairperson of Education Standing Committee (Annex.9) and of a recommendation made by Mahaveer International on 02.10.2004 for cancellation of transfer of the petitioner (Annex.10). (The averments in the writ petition on marking of Annexures carry typographical errors).

The petitioner has averred that the impugned transfer order has been made in order to victimize and harass the petitioner who has delivered excellent results and has strong support on account of exemplary social work undertaken by

him though the persons with longer stay in the same school since the year 1987 and 1993 were retained and there was vacant post in the said school and nearby area.

The petitioner has averred that aggrieved of the illegal transfer order, he preferred an appeal before the Service Appellate Tribunal and by way of interim order dated 01.11.2004 his transfer was stayed and the interim order continued until 10.01.2007 when the appeal of the petitioner was dismissed by the impugned order Annexure-2.

Assailing the orders aforesaid, learned counsel for the petitioner has strenuously contended that the petitioner has been transferred not for any administrative exigency but only for political considerations for the reasons that the wife of the petitioner is a member of a political party that remains in opposition to the party in power; that the persons with longer stay have been retained at the aforesaid school whereas the petitioner has been singled out to be transferred to a place far away only at the desire of MLA and MP belonging to the ruling political party; that the Tribunal has been in error in not considering the real issue involved and in rejecting the appeal in a cursory manner. While relying on a Division Bench decision of this Court in the case of Giriraj Sharma Vs. State of Rajasthan and others: 2002 WLC (Raj.) UC 721, learned counsel contended that the allegations of mala fide as made in

the writ petition have not been specifically replied to and have gone unrebutted and the transfer order deserves to be quashed on this count alone. The learned Dy. Government Advocate has opposed with the submissions that the allegations of mala fide remain totally baseless and the concerned MLA and MP have not even been impleaded as parties to the litigation and in their absence, such allegations cannot be enquired into; that the transfer having been ordered in administrative exigencies, calls for no interference; and that the Tribunal has rightly dismissed the appeal filed by the petitioner.

Having given a thoughtful consideration to the rival submissions and having examined the material placed on record, this Court is clearly of opinion that this writ petition remains bereft of substance and deserves to be dismissed.

The central and pivotal submission of the petitioner in the present case has been that his transfer order has not been issued in any administrative exigency but has been issued in colourable exercise of power actuated by political motives and has been brought about only at the instance of the MLA and MP belonging to the political party rival to that supported by his wife. With repeated averments that the persons of ruling party were inimical towards him, the petitioner has contended that the transfer suffers from mala fide and deserves to be

annulled; and that the Tribunal has been in error in not considering that it were not a routine petition against the transfer order but a specific case was set up with allegation against the MLA and MP with documentary proof. This court finds the allegations and assertions of the petitioner wholly misplaced, apart from being hollow and baseless.

The allegations and imputations of mala fide as made in this writ petition are only in the nature of bald allegations and nothing concrete is available on record for which the allegations of mala fide could even be probed into. As pointed out by the Hon'ble Supreme Court in E.P.Royappa Vs. State of Tamil Nadu : AIR 1974 SC 555, the Court would be slow in drawing dubious inferences from incomplete facts placed before it by a litigating party particularly when the imputations are made against the holder of an office which has a high responsibility in the administration. The Hon'ble Supreme Court has pointed out that the allegations of mala fide are often more easily made then proved and the very seriousness of allegations demands proof of a high order of credibility. In the present case, the petitioner has merely referred to the so-called recommendation (Annex. 4) and has assumed that the same was decisive of matter; and on its basis alone, it could be concluded that the transfer order issued by the authority suffers from mala fide. The contentions are wholly bereft of

merit. There is nothing on record to show if the authority concerned has made the transfer order only upon such proposition stated by MP and MLA and it is difficult to return a finding that the transfer suffers from any extraneous reason what to say of mala fide.

Assuming that at the time of making of the impugned transfer order the authority had with it the recommendation as made by the MLA and MP, this Court is yet of opinion that the order of transfer is not rendered illegal or invalid on this count alone. Merely because the petitioner would refer to a so-called desire or recommendation made by the MLA and MP, it cannot be concluded that the power of ordering transfer has been exercised by the authority concerned arbitrarily or mala fide or at the instance of politicians who stood at 'ideological difference' with the petitioner, as alleged.

Looked at from yet another point of view, if the suggestions of the petitioner be accepted on their face value, it would lead to an anomalous situation that because the petitioner's wife happens to be a political worker belonging to a particular political party, he would acquire immunity from transfer if other political party holds the reins of power in the administration. Moreover, it is rather intriguing that on one hand the petitioner would raise objection against interference of the politicians in the matters of transfer; and on the other

hand would strongly rely upon the recommendation made for retaining him at the present place by another politician, i.e., the MLA of the concerned area. The stand taken by the petitioner does not inspire confidence and this court is clearly of opinion that the petitioner is not entitled to any relief in writ jurisdiction.

Apart from the fact that there is no material available on record to find *malus animus* in the respondent No.2 who issued the transfer order, this Court is of opinion that if at all the allegations as sought to be made by the petitioner were to be considered, it was definitely required of the petitioner to have impleaded such MLA and MP as parties to this litigation. The learned Dy. Government Advocate has rightly pointed out that the allegations could not be probed in their absence. Reference to the decision in Giriraj Sharma's case(supra) is entirely misplaced. From the said decision, it is clearly borne out that the said writ petitioner while challenging the orders of transfer, specifically impleaded the persons concerned against whom allegations were made; and then it was found that the allegations of mala fides had gone unrebutted. In the present case, the petitioner has consciously chosen not to implead the said MLA and MP as parties to this litigation. The entire substratum of the allegations is lost for the persons against whom such allegations are directed being not the parties to the litigation.

Having examined the overall scenario, this Court is satisfied that the order of transfer of the petitioner from Asind does not appear mala fide; and cannot be said to have been made in disregard of administrative exigencies.

The fact also remains undeniable that the petitioner has remained posted at Asind since the year 1996. The petitioner holds a transferable post and even by the impugned order, he has been transferred only within the District of Bhilwara. There appears no reason for the petitioner to insist continuance at Asind only, nor the petitioner has any legal right to insist on the posting at a particular place. It cannot be said that the petitioner has been subjected to transfer within a short span or to frequent transfers.

The other submission that persons with longer stay than the petitioner have been retained remains absolutely irrelevant. The petitioner has not shown any violation of any statutory rule whereby the person with longer stay is required to be transferred. It is for the authority concerned to decide as to which particular person is required to posted where, as pointed out by the Hon'ble Supreme Court in the case of Union of India Vs. S.L.Abbas: AIR 1993 SC 2444.

In view of the very stand taken by the petitioner and in the overall scenario, this court is further of opinion that order of transfer of the petitioner should be carried out forthwith and

without further delay. It is noticed that the appeal filed by the petitioner was dismissed on 10.01.2007; and the department directed the Headmaster of the school concerned to relieve the petitioner immediately by its order dated 18.01.2007 (Annex. 13). The petitioner filed this writ petition on 29.01.2007 and took the averment that, “the petitioner has not been relieved till today and continues to hold the post”. This court passed the stay order only on 26.02.2007. Prima facie it gives rise to serious questions as to why and how the order issued by the authority on 18.01.2007 was not complied with till passing of stay order in this case? Be that as it may, without commenting further on this aspect, the authorities are left free to take appropriate action in accordance with law.

In view of the fact that impugned transfer order was made as back on 28.09.2004, and nearly three years have passed-by, it appears necessary to clarify that apart from getting the said transfer order implemented forthwith, the authorities shall, if so required in administrative exigencies, be free to pass another appropriate order in relation to the posting of the petitioner in accordance with law.

Having examined the material placed on record and the contentions urged on behalf of the petitioner, this Court is satisfied that the order passed by the Tribunal rejecting the

appeal filed by the petitioner does not suffer from any error apparent on the face of record so as to warrant interference in writ jurisdiction.

The writ petition fails and is, therefore, dismissed with costs, quantified at Rs. 2,200/-.

(DINESH MAHESHWARI), J.

Mohan/